

## UK Government introduces European Union (Withdrawal) Bill

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### Executive summary

On 13 July 2017, the UK Government introduced into Parliament the Repeal Bill, formally known as the European Union (Withdrawal) Bill. This follows the announcement in the Queen's Speech on 21 June 2017.

The 19 clause Bill, a major piece of constitutional legislation, repeals the *European Communities Act (ECA) 1972* and effectively ends the supremacy of European Union (EU) law in the UK, transferring EU law onto the UK statute book. The Bill provides the legal "nuts and bolts" necessary for leaving the EU, and performs the following four main functions:

1. Repeals the ECA 1972 which provides legal authority for EU law to have effect in the UK, giving power to UK institutions on the day the UK leaves the EU
2. Converts EU law as it stands at the moment of exit into UK law, before the UK leaves the EU. Wherever possible, the same rules and laws are intended to apply on the day the UK officially leaves the EU
3. Creates powers to make secondary legislation until exit day to implement the withdrawal agreement and to allow corrections to be made to laws that would otherwise no longer operate appropriately once the UK has left the EU
4. Maintains the current scope of devolved decision making powers in areas currently governed by EU law

The Bill is intended to allow businesses to continue operating knowing the rules will not change significantly overnight upon exit, and provides certainty that rights and obligations will not be subject to sudden change. It also ensures that it will be up to the UK Parliament (and, where appropriate, the devolved legislatures) to amend, repeal or improve any piece of EU law (once it has been brought into UK law) at the appropriate time after the UK has left the EU.

## Detailed discussion

### Approach taken to retain existing EU law

The Bill separately addresses EU-derived domestic legislation, direct EU legislation, rights under the ECA, and the interpretation of retained EU law. This is achieved in five clauses, which have broad effect. For example, in relation to direct EU legislation, the Bill provides that “Direct EU legislation, so far as operative immediately before exit day, forms part of domestic law on and after exit day.” Beyond this, the Bill makes provisions allowing for the passing of Statutory Instruments to change the imported EU law. The detail will be within these Statutory Instruments and the Department for Exiting the European Union has previously estimated that around 800 to 1,000 EU-exit related Statutory Instruments will be required.

### The courts and the status of EU law

The Government has confirmed in the Repeal Bill that the supremacy of EU Law in the UK will come to an end. Pre-Brexit EU law will be preserved as at the date of leaving and will essentially become UK law at that time, and so will continue to have an influence on the interpretation of UK law; however, post-Brexit, the UK Supreme Court will become the ultimate and final court of interpretation and will therefore be able to overturn previous case law, should it consider it appropriate to do so. In addition, it will no longer interpret any UK law by reference to EU Law (e.g., EU Directives).

### Devolution

The Bill amends each of the devolution statutes (the *Scotland Act 1998*, the *Northern Ireland Act 1998*, and the *Government of Wales Act 2006*) so as to maintain the current parameters of devolved competence in regards to retained EU law. It provides that the devolved legislatures or administrations may only modify retained EU law to the extent that they had the competence to do so immediately

before exit. This means that devolved institutions will still be able to act after exit as they could prior to exit in relation to retained EU law.

### How should businesses react?

The Bill provides the wherewithal for the Government to change the adopted EU law. However, uncertainty as to the detail remains and hence taxpayers should consider the following steps for forming plans within this environment:

- ▶ Understand and quantify odds and scenarios of outcomes
- ▶ Assess the worst-case scenario impact
- ▶ Deconstruct Brexit into meaningful parts
- ▶ Spot opportunities to drive change
- ▶ Address what can be addressed now
- ▶ Identify trigger points and signposts
- ▶ Understand what is signal and what is “noise”

In addition, the following key areas will require significant attention in the coming months:

#### Trade and customs rules and restrictions

The Government will introduce the Customs Bill in due course, establishing the framework to implement a new UK customs regime. Managing costs and ensuring the continued movement of goods will be critical during this phase of transition. Customs declarations will rise significantly when the UK leaves the customs union, putting pressure on port infrastructure. This will impact all imports/exports not just ones from/to the EU. In addition, fragmented and fragile supply chains will exacerbate the situation. While there remains uncertainty on the duty rate outcomes, there is a high likelihood that there will be a customs border with the EU and so companies should ensure that they are ready to import and export. With potential related systems changes required to achieve that, companies are likely to find that the current state assessment needs to start now.

#### Value-Added Tax (VAT)

As noted above, the Repeal Bill will ensure that EU VAT case law will continue to take precedence for the time being. This case law, which interprets the EU legislation underpinning the UK’s VAT regime, will mean that no immediate changes will occur to the UK’s VAT system post Brexit. However, going forward the UK will have the ability to move away from EU law and case-law precedent to implement changes and, over time, begin to rely on new UK focused case-law.

More immediately the loss of intra-Community trading status post-Brexit will have a significant VAT impact on trade within the EU, which will become more expensive and create new (in some cases additional VAT administrative, systems and accounting) requirements. Organizations should be taking the following into consideration:

- ▶ Every acquisition of goods to/from the EU becomes an import with clearance obligations
- ▶ VAT deferment account increases - requiring additional and possibly substantial bank guarantee costs
- ▶ UK VAT numbers no longer in the VIES system - changing the rules for demonstrating that the UK party qualifies as a VAT taxable person
- ▶ Proof of export to obtain 0% for movement of goods to the EU
- ▶ UK and EU VAT reclaimed through a new system as the EU VAT Refund Directive will no longer apply
- ▶ New distance selling requirements to account for VAT where goods are sold
- ▶ Loss of EU VAT "easements" may lead to new VAT registration and compliance requirements (such as Triangulation for movement of goods where three EU Member States are involved in a supply chain)

### Social security

Until the UK leaves the EU it is party to the EU Social Security Regulations which coordinate where:

- ▶ Employers and individuals pay social security contributions (to avoid dual liabilities based on domestic rules)
- ▶ Individuals derive entitlement to state benefits e.g., retirement pension

In the absence of new arrangements, the UK would have to rely on the longstanding bilateral social security agreements in place with certain other EU Member States. However there will be gaps in coverage as the UK does not have bilateral agreements with all Member States and those that do exist do not provide an equivalent level of protection to the EU Regulations. This will likely lead to higher social security costs and increased administration for companies and individuals both leaving the UK to work temporarily in certain Member States and vice versa.

Careful consideration and assessment will be required on the following:

- ▶ The potential additional social security cost implications post-Brexit for cross border workers, including international assignees and business travelers
- ▶ The additional social security related administrative requirements for the corporate/individual post Brexit
- ▶ The communication approach and any support for current/future and historic expatriates around the possible impact to their future state pension, healthcare and other related benefit entitlements
- ▶ Any required changes to current social security mobility policy if individuals fall out of their "home" social security scheme due to Brexit

### Corporation tax

Businesses will see a number of changes when the UK leaves the EU, including loss of access to the reduced withholding tax rates on interest, royalties and dividend distributions that are currently available under various EU Directives. Although the UK has a strong network of double tax treaties to eliminate or reduce the withholding tax burden, these are not always as beneficial as the EU Directives.

Alongside this, the changes in relation to the flow of goods and labor, as well as changes in regulatory requirements (as the UK will become a "third country" rather than a Member State) will mean that businesses need to carefully consider their supply chains and ownership structures to ensure that these remain fit for purpose. This may necessitate a reorganization of EU operations.

At present a UK company can establish or operate via branches in EU Member States. Similarly, any national in one Member State may establish a company in another Member State without disadvantage. It is unclear as to whether these rights will remain or whether existing branches/companies will have to comply with additional local requirements.

Existing EU law facilitates cross-border reorganizations, although this can still take some time to achieve. In some cases, businesses will want to ensure that any reorganization required can be completed while the UK remains part of the EU and retains access to the relevant provisions.

There are also a number of EU legislative amendments in the pipeline from a business tax perspective, such as the Anti-Tax Avoidance Directive and proposals being considered for public Country-by-Country reporting. Depending upon the negotiations, the UK may need to take account of these and businesses should be aware of the proposals and plan for how they might impact UK legislation.

### Workforce

While we wait for the promised Immigration Bill to provide more details, employers should consider the following points:

- ▶ To the extent that it is already known, review the nationality of the workforce to identify the potential effect of changes to their freedom of movement
- ▶ Check that all employees have provided up-to-date right to work documents - investigate any gaps (regardless of nationality)
- ▶ Identify any potential areas of concern and consider the current company policy - if any - relating to assisting both workers and job applicants with immigration issues
- ▶ Consider the company's policies on equal opportunities and/or fair treatment at work as well as any training needs for staff, particularly managers, on the risks of both direct and indirect discrimination when dealing with applicants and direct reports

- ▶ Talk to the workforce - communicate with the entire workforce to ensure that all workers are aware that the company is addressing Brexit-related issues in an open and inclusive manner. Listen to concerns raised and work with employees in a balanced manner to address issues where possible and practicable

### Employment Law

Employers will still be subject to EU laws until the UK leaves the EU. There is potential for employment laws to change after the date of exit and whether any such changes will be made will be for political or social reasons, rather than for legal ones arising as a consequence of Brexit.

The current legal landscape of EU derived employment rights will be preserved under the Repeal Bill, and so while any changes to existing employment laws may be more easily implemented, they will not necessarily be less burdensome for employers. Employers should therefore continue to keep a close eye on the Government's proposals to change employment laws irrespective of Brexit, for example as a consequence of the Taylor Review published the week of 10 July, (looking into, among other things, the "gig economy" which has made a number of recommendations which would, if implemented, have far reaching effects for employers.

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